

By: Keffer of Eastland

H.B. No. 821

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of transportation services for natural gas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Utilities Code, is amended by adding Chapter 125 to read as follows:

Chapter 125. Transportation and Market Access

Sec. 125.001. Short Title

This Chapter may be cited as the Texas Competitive Gas Market Act.

Sec. 125.002. Findings and Purpose

(a) Findings:

(1) A free market economy is central to the freedoms and economic well-being of the citizens of Texas. Access to the benefits of choice and market competition is essential to a free market economy. Any entity with monopoly power over a portion of the journey of natural gas from the wellhead to its point of end use has the power to deprive producers, marketers and consumers of natural gas of the economic benefits of free market competition. For this reason the drafters of the Texas Constitution declared in Article I, Section 26, that "monopolies are contrary to the genius of a free government and shall never be allowed."

(2) To that end, the Legislature has previously established the Railroad Commission of Texas and provided by

1 statute a system for regulating gas utilities and protecting
2 producers, marketers and consumers of natural gas from the abuse of
3 monopoly power. Such regulation is especially appropriate in light
4 of the public nature of gas utilities who have been given the
5 extraordinary power of eminent domain and rights to use public
6 rights of way in order to lay and operate pipelines in the public
7 interest.

8 (3) At present, natural gas markets are not
9 competitive in many areas of the state because of pipeline monopoly
10 power. In many situations, producers, marketers, and purchasers
11 have only one available means of transportation for natural gas and
12 are thereby prevented from access to competitive markets. This
13 lack of competition in natural gas markets results in higher costs
14 to residential, commercial, and industrial customers, reduced
15 transportation, reduced drilling and production for oil and gas,
16 waste, and the impairment of correlative rights in oil and gas. It
17 is costly to the Texas economy, to the State of Texas, and to local
18 taxing authorities, and imposes an undue and unnecessary burden on
19 the citizens of Texas.

20 (4) It is desirable to clarify and strengthen the
21 power of the Railroad Commission, acting in tandem with the courts
22 of Texas, to require fair, reasonable, and nondiscriminatory
23 transportation of natural gas by those pipelines that possess
24 monopoly power over all or any portion of the journey from wellhead
25 to place of end use, so that the full benefits of free and open
26 competitive markets in the production, marketing and consumption of
27 natural gas may be obtained by the citizens of Texas. Clarification

1 will also promote efficiency and cost savings in the administrative
2 and court legal processes.

3 (5) The public interest in free market competition
4 will be well-served by clarifying the rights of producers,
5 marketers and consumers of natural gas to seek and obtain relief
6 from the exercise of monopoly power by natural gas pipelines.

7 (b) Purpose. This Chapter is enacted to provide more clear
8 and explicit authority on the part of the Railroad Commission of
9 Texas and the courts of Texas to curb the abuse of monopoly power by
10 natural gas pipelines and thereby promote the free market and
11 competition in the purchase and sale of natural gas.

12 Sec. 125.003. Transportation required

13 A gas utility shall transport natural gas on behalf of any
14 person requesting transportation. Such transportation shall be on
15 reasonable terms and conditions, is required whether or not the gas
16 utility is transporting on behalf of parties other than itself, and
17 shall be without discrimination in favor of any person or place, and
18 without any unreasonable preference or advantage concerning the
19 rates or services to any person or classification. The
20 transportation component included within any transportation by a
21 gas utility of gas owned by the utility shall be considered
22 "transportation" for purposes of assessing any rate,
23 discrimination, unreasonable preference, or advantage.

24 Sec. 125.004. Rates and tariffs

25 (a) The transportation rates and services of gas utilities
26 are subject to regulation. For purposes of this Chapter, "rates"
27 and "services" have the meanings defined in Sec. 101.003 of this

1 Title and specifically include all services required by a gas
2 utility to undertake transportation of gas between any two points
3 whether those services are provided by the gas utility, its
4 affiliates, or a third party designated by the gas utility to the
5 extent such services are required as a condition for the
6 transportation of natural gas.

7 (b) A gas utility shall file with the railroad commission
8 schedules for all of its transportation rates, including the
9 transportation rates available to any person who may request
10 transportation. The information on such schedules shall include,
11 but not be limited to, the geographical identity of receipt and
12 delivery points, the identity of the persons for whom gas is
13 transported, and the nature or type of service to which it applies.
14 The information on such schedules shall not be confidential and
15 shall be available for public inspection.

16 (c) Upon the request for transportation services required
17 to be provided under this Chapter, a utility that does not have a
18 tariff on file for such services shall provide transportation to
19 the person requesting the transportation at the lowest rate charged
20 by the utility for any transportation provided to any person, which
21 rate shall be the valid and lawful rate until such time as it is
22 changed by final decision and order of the Railroad Commission.

23 (d) Upon complaint or on its own motion, the railroad
24 commission shall establish the just and reasonable rates and terms
25 of service applicable to transportation by a gas utility.

26 (1) The rates shall be established under the cost of
27 service standards in this Title for ratesetting. For purposes of

1 ratesetting, the rate base and depreciation allowance shall be
2 based on the lesser of the purchase price or the original cost of
3 the property when first placed into service.

4 (2) Upon complaint by any affected person, the
5 provisions of Section 104.003(b) of this Title (insulating certain
6 rates from review on a cost of service basis) shall not apply, and
7 the rate or rates complained of shall be established under the cost
8 of service standards in this Title for ratemaking.

9 (3) If the rate so established is less than the rate
10 charged by the gas utility, it shall be effective from and after the
11 filing of the complaint.

12 (4) If the rate otherwise found to be just and
13 reasonable does not exceed one hundred and ten percent (110%) of the
14 applicable transportation rate on file and available prior to the
15 filing of the complaint, the rate on file shall be deemed to be just
16 and reasonable.

17 (e) Upon the establishment of a just and reasonable
18 transportation rate that is less than the rate that has been
19 charged, the railroad commission shall order the gas utility to
20 make a refund. The refund shall be equal to three times the
21 difference between the rate charged and the rate determined to be
22 reasonable, from and after the filing of the complaint, plus
23 reasonable interest.

24 Sec. 125.005. Interim relief

25 The railroad commission shall provide relief to affected
26 persons through the granting of interim orders where necessary and
27 appropriate to effectuate transportation under this Chapter.

1 Sec. 125.006. Limited jurisdiction over certain pipelines

2 (a) Upon complaint, a person or river authority not
3 otherwise a "gas utility" under Sections 101.003(7)(B)(i),
4 121.004, or 121.005 of this Chapter (related to certain gathering
5 or gathering-type transportation) shall be considered to be a gas
6 utility under this Title for the limited purpose and only as
7 necessary to effectuate the purposes of this Chapter.

8 (b) A person or river authority not otherwise a "gas
9 utility" under Sections 101.003(7)(B)(i), 121.004, or 121.005 of
10 this Chapter shall be entitled to the safe harbor protection of
11 Section 125.003(c)(2) of this Chapter if it has filed rates and
12 tariffs for gas transportation under Section 125.003 as if it were a
13 gas utility and acted in conformance with such rates and tariffs.

14 Sec. 125.007. Waivers and Contracts

15 Waivers of the protections of this Chapter are against public
16 policy and shall not be enforceable. Contracts may not be used to
17 defeat the policies set forth in this Chapter.

18 Sec. 125.008. Governmental entities, agencies, and
19 municipalities included Governmental entities, state and federal
20 agencies, and municipalities shall be considered to be "persons"
21 entitled to the protections set forth in this Chapter.

22 Sec. 125.009. Cost Reimbursement

23 (a) To the extent the regulatory authority determines the
24 costs are reasonable, a gas utility shall reimburse the costs a
25 complainant in a proceeding filed under this Title, if the
26 complainant is wholly or partially successful in prosecuting the
27 complaint before a regulatory authority or a court.

1 (b) Costs for which a successful complainant may receive
2 reimbursement under this section include any reasonable expenses
3 related to the investigation, preparation, prosecution and
4 litigation of the matter before any regulatory authority or court,
5 including the reasonable costs of consultants, accountants,
6 auditors, attorneys, expert witnesses, and engineers, including
7 costs not yet paid because payment has been deferred pending
8 reimbursement by a gas utility.

9 (c) Notwithstanding any other provision of this Title, a gas
10 utility may not recover as or through a charge to the gas utility's
11 customers any amounts paid as reimbursement under this section or
12 any expenses incurred in defending against a claim for which
13 reimbursement under this section is ordered.

14 (d) Nothing in this Section is intended to diminish or
15 restrict the right of municipalities to obtain rate assistance and
16 receive cost reimbursement under Section 103.022 of this Title.

17 Sec. 125.010. Mediation

18 In any proceeding under this Chapter, the parties shall
19 attempt to resolve their differences by participating in an
20 informal confidential mediation prior to a hearing on the merits.

21 Sec. 125.011. Railroad Commission Enforcement and Actions

22 The railroad commission shall actively enforce the
23 provisions of this Chapter in order to promote and protect
24 competitive gas markets. In fulfilling its enforcement duties, the
25 railroad commission shall not rely solely or primarily on the
26 filing of complaints before taking action. The railroad commission
27 shall also monitor and study gas markets and gas transportation to

1 determine and report the extent to which market choices are
2 available at the wellhead and the extent to which markets in
3 different parts of the state are competitive.

4 Sec. 125.012. Coordination with Common Purchaser Act

5 The requirements for the non-discriminatory taking of gas by
6 common purchasers under the Texas Common Purchaser Act, Chapter
7 111, Subchapter D, Texas Natural Resources Code, are important to
8 preventing waste and protecting correlative rights in oil and gas.
9 By facilitating gas transportation and open gas markets, the
10 provisions of this Chapter are intended to complement and
11 strengthen the requirements for the nondiscriminatory taking of gas
12 by common purchasers, and these provisions shall be so administered
13 and applied.

14 Sec. 125.013. Damages and penalty recoverable by aggrieved
15 party

16 (a) In addition to remedies available before the Railroad
17 Commission, any person aggrieved by a violation of the provision of
18 this Chapter is entitled to recover treble civil damages in a civil
19 suit in a district court of Texas.

20 (b) In addition to damages, if any, a penalty of not less
21 than \$100 and not more than \$1,000 for each violation is recoverable
22 against a transporter of natural gas by any person aggrieved by a
23 violation of the provisions of this Chapter.

24 (c) Each violation and each day that the violation continues
25 is subject to a separate penalty as to each delivery point into the
26 pipeline, each well behind any delivery point, or redelivery point
27 out of the pipeline, whichever is greater, for transportation under

1 this Chapter.

2 (d) A person who recovers a penalty or damages under this
3 section is also entitled to reasonable litigation expenses,
4 including, but not limited to, attorney's fees, expert witness and
5 consultant fees, and costs of court.

6 (e) A suit to collect a penalty under this section must be
7 brought in the name of and for the benefit of a person or persons
8 aggrieved. In addition to the counties in which suit may be brought
9 pursuant to Chapter 15, Tex. Civ. Prac. Rem. Code, suit may be
10 brought in any county in which an aggrieved person resides.

11 (f) A finding of violation of the provisions of this Chapter
12 may be made by any court of competent jurisdiction.

13 (g) The penalty under this section is in addition to any
14 other penalty or damages recoverable under the laws of the State of
15 Texas.

16 Sec. 125.014. Condemnation and Use of Public Properties

17 In recognition of the paramount importance that there be a
18 public use and public interest to justify the condemnation of
19 private property or the use of public properties for pipeline
20 rights of way, a gas utility or pipeline that does not comply with
21 the provisions of this Chapter shall not have the rights of
22 condemnation under Sec. 181.004 of Title 4 of this Code and shall
23 not have the authority to maintain facilities along, across, or
24 over any public highway, public road, public street and alley, or
25 public water under Sec. 181.022 of Title 4 of this Code

26 Sec. 125.015. Construction With Federal Authority

27 This Chapter shall be construed to apply so as not to conflict

1 with any authority of the United States.

2 Sec. 125.016. Cumulative Effect

3 (a) This Chapter is cumulative of laws relating to the
4 jurisdiction, power, or authority of the railroad commission over
5 gas pipelines and gas utilities and, except as specifically in
6 conflict with this Chapter, that jurisdiction, power, and authority
7 are not limited by this Chapter.

8 (b) This Chapter applies to all gas utilities, including gas
9 utilities that are under the jurisdiction, power, or authority of
10 the railroad commission in accordance with a law other than this
11 Chapter.

12 Sec. 125.017. Liberal Construction

13 This Chapter shall be construed liberally to promote the
14 effectiveness and efficiency of regulation of gas utilities and to
15 promote competitive natural gas markets.

16 SECTION 2. This Act takes effect September 1, 2005.